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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 160527473-6473-01]

RIN 0648-BG09

Atlantic Highly Migratory Species; Individual Bluefin Quota Program; Inseason Transfers

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments; notice of public hearing.

SUMMARY: NMFS proposes to modify the Atlantic highly migratory species (HMS) regulations to provide additional flexibility regarding the distribution of inseason Atlantic bluefin tuna (BFT) quota transfers to the Longline category. The proposed rule would provide NMFS the flexibility to distribute quota inseason either to all qualified Individual Bluefin Quota (IBQ) share recipients (*i.e.*, share recipients who have associated their permit with a vessel) or only to permitted Atlantic Tunas Longline vessels with recent fishing activity, whether or not they are associated with IBQ shares.

DATES: Written comments must be received on or before *[insert date 30 calendar days after the date of publication in the FEDERAL REGISTER]*. NMFS will host an operator-assisted public hearing conference call and webinar on October 4, 2016, from 2 to 4 p.m. EDT, providing an opportunity for individuals from all geographic areas to participate. See **SUPPLEMENTARY INFORMATION** for further details.

ADDRESSES: You may submit comments on this document, identified by “NOAA-NMFS-2016-0067,” by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov#!/docketDetail;D=NOAA-NMFS-2016-0067, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Thomas Warren, Highly Migratory Species (HMS) Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 55 Great Republic Drive, Gloucester, MA 01930.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS.

All comments received are a part of the public record and generally will be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

The public hearing conference call information is phone number (888) 455-5378; participant passcode 5816248. Participants are strongly encouraged to log/dial in 15 minutes prior to the meeting. NMFS will show a brief presentation via webinar followed by public comment. To join the webinar, go to:

<https://noaaevents3.webex.com/noaaevents3/onstage/g.php?MTID=e20e9f661ee7184823fb28b56cbf7d16f>; meeting number: 993 144 732; password: NOAA. Participants who

have not used WebEx before will be prompted to download and run a plug-in program that will enable them to view the webinar.

Supporting documents, including the Regulatory Impact Review and Initial Regulatory Flexibility Analysis, may be downloaded from the HMS website at www.nmfs.noaa.gov/sfa/hms/. These documents also are available by contacting Thomas Warren at the mailing address specified above.

FOR FURTHER INFORMATION CONTACT: Thomas Warren or Sarah McLaughlin, 978-281-9260; Carrie Soltanoff, 301-427-8503.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006), as amended by Amendment 7 to the 2006 Consolidated HMS FMP (Amendment 7) (79 FR 71510, December 2, 2014), and in accordance with implementing regulations. The current baseline U.S. BFT quota and subquotas were established and analyzed in the BFT quota final rule (80 FR 52198, August 28, 2015). NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

Background

BFT fishing is managed domestically through a quota system (on a calendar-year basis), in conjunction with other management measures including gear restrictions, minimum fish sizes, closed areas, trip limits, and catch shares. NMFS implements the ICCAT U.S. quota recommendation, and divides the quota among U.S. fishing categories (*i.e.*, the General, Angling, Harpoon, Purse Seine, Longline, and Trap categories) and the Reserve category. Quotas are distributed on an annual basis, but NMFS also has the regulatory authority to make inseason adjustments to BFT quotas after the initial annual allocations, if the U.S. baseline quota increases as a result of an ICCAT recommendation or as a result of a transfer of quota from the Reserve category in accordance with specific regulatory determination criteria.

Vessels fishing with pelagic longline gear, which catch BFT incidentally while fishing for target species (primarily swordfish and yellowfin tuna), hold limited access Atlantic Tunas Longline permits and utilize Longline category quota. Through Amendment 7, NMFS established the IBQ Program, a catch share program that identified 136 permit holders as IBQ share recipients based on specified criteria, including historical target species landings and the bluefin catch-to-target species ratios from 2006 through 2012. Consistent with 50 CFR 635.15(b)(2), recipients received one of three shareholder percentages (low, medium, or high) based on their score related to these criteria.

The specific objectives of the IBQ Program were to:

1. Limit the amount of BFT landings and dead discards in the pelagic longline fishery;

2. Provide strong incentives for the vessel owner and operator to avoid BFT interactions, and thus reduce bluefin dead discards;
3. Provide flexibility in the quota system to enable pelagic longline vessels to obtain BFT quota from other vessels with available individual quota in order to enable full accounting for BFT landings and dead discards, and minimize constraints on fishing for target species;
4. Balance the objective of limiting bluefin landings and dead discards with the objective of optimizing fishing opportunities and maintaining profitability; and
5. Balance the above objectives with potential impacts on the directed permit categories that target BFT, and the broader objectives of the 2006 Consolidated HMS FMP and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

IBQ share recipients receive an annual allocation of the Longline category quota based on the percentage share they received through Amendment 7 but only if their permit is associated with a vessel in the subject year (*i.e.*, only “qualified IBQ share recipients” receive annual allocations). Permit holders that were not selected to receive IBQ shares through Amendment 7 may still fish, but they are required to lease quota. Leasing occurs through the IBQ electronic system. Every vessel must have a minimum amount of quota allocation to fish (described below), whether obtained through their shares or by leasing, and every vessel must individually account for its BFT landings and dead discards through the IBQ electronic system.

Delayed effective dates for some of the regulations implemented through Amendment 7 assisted in the transition to measures adopted in Amendment 7, which

substantially increased individual vessel accountability for BFT bycatch (landings and dead discards) in the Longline fishery. During 2015, the first year of implementation of the IBQ Program, a pelagic longline vessel that had insufficient IBQ to account for its landings and dead discards (*i.e.*, went into “quota debt”) was allowed to continue to fish, however any additional landings and dead discards continued to accrue, and the cumulative quota debt needed to be accounted for no later than December 31, 2015. In contrast, as of January 1, 2016, a vessel fishing with pelagic longline gear must have a minimum IBQ allocation to fish and may not fish if it has quota debt. A minimum allocation required to fish is 0.25 mt (551 lb) whole weight (ww) for a trip in the Gulf of Mexico and 0.125 mt ww (276 lb ww) for a trip in the Atlantic. Pelagic longline vessels may lease IBQ allocation from other such vessels or from Purse Seine fishery participants in the IBQ Program to obtain sufficient allocation for their trips or to account for quota debt.

In July 2015 and January 2016, NMFS transferred quota inseason from the Reserve category to the Longline category (80 FR 45098, July 29, 2015; 81 FR 19, January 4, 2016). In transferring quota inseason, NMFS considered the relevant regulatory determination criteria for inseason or annual adjustments under 50 CFR 635.27(a)(8) as required, and decided that allocation to the Longline category was warranted to increase the amount of quota available to the qualified IBQ share recipients and therefore help those permit holders account for BFT landings and dead discards, foster conditions in which permit holders became more willing to lease IBQ, allow continued fishing for available target species quota, and reduce uncertainty in the fishery as a whole. In these inseason actions, NMFS distributed the transferred quota in equal

amounts to the 136 qualified IBQ share recipients, which included those with vessels actively fishing and those not actively fishing. NMFS distributed the quota transferred inseason equally in order to provide each qualified IBQ share recipient the minimum amount of IBQ allocation needed to fish. Given the small amount of quota being transferred to the category, distribution according to share holder percentages would have resulted in transfers below the minimum allocation needed to fish and would have made the transfer ineffective in easing the transition to the Amendment 7 measures as intended. During 2015, based on logbook data, 104 vessels fished with pelagic longline gear, 100 of which were vessels associated with IBQ shares and 4 of which were not. A total of 59 vessels landed BFT, and 2 vessels accounted for dead discards but did not land BFT.

Also during 2015, NMFS implemented a quota increase for the Longline category that resulted from an increase in the quota at ICCAT and the subsequent modification of the baseline annual U.S. BFT quota and subquotas (80 FR 52198, August 28, 2015). In adjusting the baseline annual quota upwards, NMFS also adjusted the annual quota distributions to the 136 qualified IBQ share recipients, based upon their shareholder percentages.

During 2015, 36 of the 136 qualified IBQ share recipients had no pelagic longline fishing activity (*i.e.*, they took no fishing trips with pelagic longline gear). Furthermore, 31 of the 36 qualified IBQ share recipients that did not fish also did not lease IBQ to others (*i.e.*, 31 neither fished nor leased and 5 did not fish, but leased out their IBQ allocations). As a result, their IBQ allocations went unused for the year and expired at year's end.

Since January 1, 2015, NMFS has received requests (among other suggestions about the IBQ Program and management of the pelagic longline fishery) to distribute quota inseason only to those vessels that are currently fishing (whether associated with IBQ shares or not) to optimize fishing opportunity and account for dead discards, rather than distributing it equally to all IBQ share recipients, some of whom end up neither using it nor making it available to other vessel owners. In advance of and at the March 2016 HMS Advisory Panel meeting, pelagic longline fishery participants expressed concerns about the availability of IBQ allocation as implemented under Amendment 7. Longline fishery participants have stated that, while they were able to obtain sufficient IBQ allocation by leasing it under the conditions that applied in 2015, those conditions were temporary. They are concerned that, as additional requirements now apply beginning in 2016, the IBQ Program could negatively impact vessel operations and finances given the pricing of IBQ, the distribution of quota among permit holders as implemented by Amendment 7, and the behavior of some permit holders who, for example, they say hold on to IBQ for the entire season without participating in the fishery or engaging in leasing. They also say that the expense of leasing IBQ allocation when needed can impact other operational costs such as crew pay. If availability is limited, or costs are prohibitive, the operational impacts increase. IBQ Program data analyzed in this action include the leases that were completed in 2015, and generally reflect that, for leasing transactions that occurred, sales revenue received per pound approximated the cost per pound of leasing IBQ. However, IBQ Program participants (which include any permit holder or vessel that leases quota to facilitate pelagic longline operations) and potential lessees have communicated that there were instances where the cost at which

lessors were willing to lease their IBQ was prohibitive and leasing did not occur. Furthermore, expanded opportunities to fish with pelagic longline gear within the available swordfish and yellowfin tuna quotas are contingent on access to additional quota to account for BFT bycatch and discards. Longline fishery participants requested that NMFS take further steps to provide more access to quota for those vessels with recent fishing activity to reduce the dependence on qualified IBQ share recipients, some of whom are not participating in the fishery or engaging in leasing.

After looking at the issues raised by the fishery participants and at trends in IBQ leasing and utilization for 2015, it is apparent that additional flexibility is needed regarding the distribution of inseason transfers of BFT quota within the Longline category to assist NMFS in providing reasonable opportunities to fish for target species under the limits imposed by the IBQ Program and to optimize distribution of BFT quota transferred inseason to the Longline category, while at the same time encouraging the appropriate functioning of the IBQ Program, including its leasing provisions. As discussed above, 36 of 136 (*i.e.*, 26 percent) qualified IBQ share recipients that also received additional quota from inseason transfers did not fish in 2015, and 31 neither fished nor leased. Thus, under current conditions, the BFT quota from inseason transfers is not being distributed optimally and much of the Longline category BFT quota is going unused (136 mt in 2015). In addition, as discussed above, there were instances where permitted Atlantic Tunas Longline vessels sought to lease IBQ, but leasing did not occur due to cost prohibitive prices set by lessors. This underutilization of IBQ is not consistent with the third and fourth objectives of the IBQ Program, because it places

unnecessary constraints on opportunities for longline fishery participants to fish for target species.

This proposed rule would modify the regulations to specify that distribution of quota transferred to the Longline category inseason (*i.e.*, beyond the baseline Longline category quota that is distributed to qualified IBQ share recipients) may be *either* to the qualified IBQ share recipients *or* to permitted Atlantic Tunas Longline vessels with recent fishing activity whether they are associated with qualified IBQ share recipients or not. NMFS would determine recent fishing activity through logbook, vessel monitoring system (VMS), or electronic monitoring data indicating fishing activity in the subject and previous year. For example, for inseason transfers in 2016, NMFS would examine fishing activity data for 2015 and 2016 to determine if there was fishing activity during that period. Providing flexibility in the quota system and maintaining flexibility of the regulations to account for the highly variable nature of the BFT fishery was an objective of Amendment 7 (See, *e.g.*, Amendment text at 79 FR 71510 and 71559).

In deciding whether to transfer additional quota to the Longline category inseason from the Reserve category, NMFS would continue to consider the 14 regulatory determination criteria for inseason or annual adjustments at 50 CFR 635.27(a)(8), including the need to "optimize fishing opportunity."

Next, NMFS would decide whether to distribute that quota transferred inseason to all qualified IBQ share recipients or only to permitted Atlantic Tunas Longline vessels with recent fishing activity whether or not they are associated with IBQ shares. This decision would be based on factors for the subject year and previous year, including the number of BFT landings and dead discards, the number of IBQ lease transactions, the

average amount of IBQ leased, the average amount of quota debt, the annual amount of IBQ allocation, any previous inseason allocations of IBQ, the amount of BFT quota in the Reserve category, the percentage of BFT quota harvested by the other quota categories, the remaining number of days in the year, the number of active vessels fishing not associated with IBQ share, and the number of vessels that have incurred quota debt or that have low levels of IBQ allocation. In deciding which approach will be used, NMFS will consider which approach will best meet the specific objectives of the IBQ Program as stated in Amendment 7, including the objective of providing “flexibility in the quota system to enable pelagic longline vessels to obtain BFT quota from other vessels with available individual quota in order to enable full accounting for BFT landings and dead discards, and minimize constraints on fishing for target species.” For example, in years where leasing by IBQ share recipients is not occurring as anticipated by Amendment 7 distribution to only active vessels, might be the appropriate approach to encourage leasing at levels that ensure appropriate functioning of the IBQ system in future years. In years where the leasing program is functioning well and leasing is occurring as needed, distribution may be to all of the qualified IBQ share recipients.

If NMFS decides to distribute the inseason quota to all qualified IBQ share recipients, those qualified IBQ share recipients would receive equal amounts of the quota transferred.

If NMFS decides to distribute inseason quota only to those vessels with recent fishing activity, vessels with “recent fishing activity” would be vessels determined by NMFS to have recent fishing activity in the pelagic longline fishery during the subject and previous year based upon available information such as logbook, VMS, or electronic

monitoring data. The specific data and date range analyzed in a given inseason action would be those available at the time of year the inseason transfer occurs, and will depend on which complete data are available at that time. For example, logbook data for a particular year are typically not available for use until several months into the following year due to the process of data entry and quality control, as well as late reporting. Therefore, early in a year, NMFS may determine vessel activity for the previous and subject year using VMS data, whereas later in the year, it might use both logbook and VMS data.

Whether NMFS decides to distribute quota to all qualified IBQ recipients or to only those permitted vessels with recent fishing activity, quota transferred inseason would be distributed equally to the vessel account associated with the relevant vessel via the electronic IBQ system. In either case, when a qualified IBQ share recipient receives inseason quota, the quota will be designated as either Gulf of Mexico (GOM) IBQ, Atlantic (ATL) IBQ, or both GOM and ATL IBQ, according to the share recipient's regional designations. For vessels with recent fishing activity that are not qualified IBQ share recipients, NMFS would assign the distributed quota a regional designation based on where the majority of their "recent fishing activity" occurred for the relevant period analyzed.

The economic impacts of the proposed measures would differ only slightly from the impacts analyzed by Amendment 7. For example, if NMFS had opted in early 2016 to exercise the flexibility to distribute quota inseason to only those vessels with recent fishing activity, the number of vessels that would have received inseason quota would have been reduced from 136 to approximately 104, based on logbook data indicating the

number of vessels with recent fishing activity in 2015, and each vessel would have received more quota. This increased allocation would help these active vessels to remain fishing longer under fewer quota constraints and would reduce the transaction costs associated with finding additional quota through the leasing program in years where leased quota is not readily available. The general goal would be to mitigate the type of situation that occurred in 2015, where over 25 percent of qualified IBQ share recipients were not actively fishing and, of them, 86 percent were not leasing IBQ allocation to other vessels through the IBQ Program. Distributing even more quota to vessels that are not fishing and not leasing the unused quota to other fishery participants mid-season does not minimize constraints on fishing for target species, nor does it help to meet objectives of the IBQ program, specifically to optimize fishing opportunities for those target species and to maintain profitability of the pelagic longline fleet.

The inactive vessels (*e.g.*, 36 qualified IBQ share recipients in 2015) would not receive inseason quota under the above scenario. Inactive vessels would not be fishing at the time, and thus would not have an immediate need for the quota to support their directed fishing operations. If they chose to fish later in the season, they would still have quota available for their use from their initial IBQ allocation for the year. Thus, the cost to inactive vessels of the proposed inseason distribution alternative would mainly be limited to the forgone ability to lease out their allocation. This cost is analyzed in the Initial Regulatory Flexibility Analysis. Under Amendment 7, the purpose of quota leasing was to facilitate directed fishing for Atlantic swordfish, other tunas, and other pelagic species, and to provide strong incentives for the vessel owners and operators to avoid BFT interactions, while also providing a mechanism for vessels to obtain more

quota, if needed, given the required minimum allocation to fish. If IBQ share recipients do not plan to fish, the possibility of inseason quota transfers being distributed to active fishery participants might encourage them to lease their allocations to those participants earlier in the season. This in turn would facilitate a more effective IBQ leasing program and minimize any loss of potential IBQ leasing revenue.

In addition, providing quota inseason to permitted vessels with recent fishing activity would include some vessels with permits that did not qualify for IBQ share in Amendment 7. Such vessels may include new entrants to the fishery that have participated in the IBQ Program by leasing IBQ in order to fish initially.

Notwithstanding the defined scope of qualified IBQ share recipients (136), the pelagic longline fishery participants change over time and include vessels with Atlantic Tunas Longline permits that did not qualify for IBQ shares and entry-level participants.

Therefore the proposed regulation would assist new entry to the fishery when there is an inseason transfer of quota to the Longline category, or would help facilitate leasing by inactive vessels earlier in the season to facilitate such entry.

Request for Comments

NMFS solicits comments on this proposed rule through [*insert date 30 calendar days after the date of publication in the FEDERAL REGISTER*]. See instructions in **ADDRESSES** section.

Public Hearing Conference Call

NMFS will hold a public hearing conference call and webinar on October 4, 2016, from 2 p.m. to 4 p.m. EDT, to allow for an additional opportunity for interested members

of the public from all geographic areas to submit verbal comments on the proposed quota rule.

The public is reminded that NMFS expects participants at public hearings and on conference calls to conduct themselves appropriately. At the beginning of the conference call, a representative of NMFS will explain the ground rules (all comments are to be directed to the agency on the proposed action; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; and attendees should not interrupt one another). The NMFS representative will attempt to structure the meeting so that all attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject matter. If attendees do not respect the ground rules, they will be asked to leave the conference call.

Classification

The NMFS Assistant Administrator has determined that the proposed rule is consistent with the 2006 Consolidated HMS FMP and its amendments, the Magnuson-Stevens Act, ATCA, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

This action has been preliminarily determined to be categorically excluded from the requirement to prepare an environmental assessment (EA) in accordance with the National Environmental Policy Act and NOAA administrative order NAO 216-6 (as preserved by NAO 216-6A), subject to further consideration after public comment. The

proposed action may be categorically excluded since it is a change to a previously analyzed and approved fishery management plan, and the proposed change will have no substantive effect, individually or cumulatively on the human environment beyond that already analyzed in the Environmental Impact Statement for Amendment 7 to the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (79 FR 71510, December 2, 2014) and in the EA for the final rule that increased the U.S. BFT quota (for 2015 and until changed) based on the recommendation of the International Commission for the Conservation of Atlantic Tunas (80 FR 52198, August 28, 2015). Inseason quota allocations to the pelagic longline category do not modify the annual U.S. BFT quota nor the fishing mortality associated with that quota. Minor modifications of allocations to vessels contribute to determining when and where fishing mortality occurs, but do not alter the overall allowable mortality under the U.S. BFT quota. This action would not directly affect fishing effort, quotas, fishing gear, authorized species, interactions with threatened or endangered species, or other relevant parameters. Thus, there is no environmental or ecological effect different than what was analyzed previously. A final determination will be made prior to publication of the final rule for this action.

NMFS has prepared a Regulatory Impact Review (RIR), and an Initial Regulatory Flexibility Analysis (IRFA), which present and analyze anticipated social, and economic impacts of the alternatives contained in this proposed rule. The list of alternatives and their analyses are provided in the draft RIR and are not repeated here in their entirety. A copy of the draft RIR prepared for this proposed rule is available from NMFS (see **ADDRESSES**).

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA, 5 U.S.C. 603 *et seq.*), and is included below. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the **SUMMARY** section of the preamble.

The goal of the RFA is to minimize the economic burden of federal regulations on small entities. To that end, the RFA directs federal agencies to assess whether the proposed regulation is likely to result in significant economic impacts to a substantial number of small entities, and identify and analyze any significant alternatives to the proposed rule that accomplish the objectives of applicable statutes and minimizes any significant effects on small entities.

Description of the Reasons Why Action is Being Considered

Section 603(b)(1) of the RFA requires an IRFA to contain a description of the reasons why the action is being considered. The purpose of this proposed rule is, consistent with the 2006 Consolidated HMS FMP objectives, the Magnuson-Stevens Act, and other applicable law, to provide NMFS the flexibility to distribute quota inseason to all qualified IBQ share recipients (those who have associated their share with a vessel) or to permitted Atlantic Tunas Longline vessels with recent fishing activity whether or not they are associated with IBQ shares.

Since January 1, 2015, NMFS has received requests (among other suggestions about the IBQ Program and management of the pelagic longline fishery) to distribute quota inseason to those vessels that are currently fishing (whether associated with IBQ shares or not) to optimize fishing opportunity and account for dead discards, rather than

distributing it equally to all IBQ share recipients, some of whom end up neither using it, nor making it available to other vessel owners. In advance of and at the March 2016 HMS Advisory Panel meeting, pelagic longline fishery participants expressed concerns about the availability of IBQ allocation as implemented under Amendment 7. Longline fishery participants have stated that, while they were able to obtain sufficient IBQ allocation by leasing it under the conditions that applied in 2015, those conditions were temporary. They are concerned that, as additional requirements now apply beginning in 2016, the IBQ Program could negatively impact vessel operations and finances given the pricing of IBQ, the distribution of quota among permit holders as implemented by Amendment 7, and the behavior of some permit holders who, for example, they say hold on to IBQ for the entire season without participating in the fishery or engaging in leasing. Longline fishery participants requested that NMFS take further steps to provide more access to quota for those vessels with recent fishing activity to reduce the dependence on qualified IBQ share recipients, some of whom are not participating in the fishery or engaging in leasing.

After looking at the issues raised by the fishery participants and at trends in IBQ leasing and utilization for 2015, it is apparent that additional flexibility is needed regarding the distribution of inseason transfers of BFT quota within the Longline category to assist NMFS in providing reasonable opportunities to fish for target species under the limits imposed by the IBQ Program and to optimize distribution of BFT quota transferred inseason to the Longline category. To account for the highly variable nature of the BFT fishery and maintain flexibility in the regulations, NMFS is considering this action, which provides flexibility in the quota system.

Statement of the Objectives of, and Legal Basis for, the Proposed Rule

Section 603(b)(2) of the RFA requires the IRFA to contain a statement of the objectives and legal basis for the proposed rule. The objective of this proposed rule is to provide additional flexibility regarding the distribution of inseason BFT quota transfers to the Longline category in order to facilitate the management of Atlantic HMS resources in a manner that maximizes resource sustainability and fishing opportunity, while minimizing, to the greatest extent possible, the socioeconomic impacts on affected fisheries.

The legal basis for this proposed rule stems from the dual authority of the Magnuson-Stevens Act and ATCA. Under the Magnuson-Stevens Act, NMFS must, consistent with ten National Standards, manage fisheries to maintain optimum yield (OY) by rebuilding overfished fisheries and preventing overfishing. Under ATCA, NMFS is authorized to promulgate regulations as may be necessary and appropriate to carry out binding recommendations of ICCAT. Additionally, any management measures must be consistent with other domestic laws including the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), and the Coastal Zone Management Act (CZMA).

Description and Estimate of the Number of Small Entities to Which the Proposed Rule Would Apply

Section 603(b)(3) of the RFA requires agencies to provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States, including fish harvesters. SBA's regulations provide that an agency may

develop its own industry-specific size standards after consultation with Advocacy and an opportunity for public comment (see 13 CFR 121.903(c)). Under this provision, NMFS may establish size standards that differ from those established by the SBA Office of Size Standards, but only for use by NMFS and only for the purpose of conducting an analysis of economic effects in fulfillment of the agency's obligations under the RFA. To utilize this provision, NMFS must publish such size standards in the **Federal Register**. In a final rule effective on July 1, 2016 (80 FR 81194, December 29, 2015), NMFS established a small business size standard of \$11 million in annual gross receipts for all businesses in the commercial fishing industry (NAICS 11411) for RFA compliance purposes. NMFS considers all HMS Atlantic Tunas Longline permit holders (280 as of October 2015) to be small entities because these vessels have reported annual gross receipts of less than \$11 million for commercial fishing. The average annual gross revenue per pelagic longline vessel was estimated to be \$187,000 based on the 170 vessels that fished between 2006 and 2012, and that produced an estimated \$31.8 million in total revenue annually. The maximum annual revenue for any pelagic longline vessel between 2006 and 2015 was \$1.9 million, well below the NMFS small business size threshold of \$11 million in gross receipts for commercial fishing.

NMFS has determined that this proposed rule would apply to the small businesses associated with the 136 Atlantic Tunas Longline permits with IBQ shares and the additional permitted Atlantic Tunas Longline vessels that fish with quota leased through the IBQ Program. The impacts on these small businesses are described below in the discussion of alternatives considered. NMFS has determined that this action would not

likely directly affect any small organizations or small government jurisdictions defined under the RFA.

Description of the Projected Reporting, Record-Keeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities Which Would Be Subject to the Requirements of the Report or Record

Section 603(b)(4) of the RFA requires agencies to describe any new reporting, record-keeping and other compliance requirements. This proposed rule does not contain any new collection of information, reporting, or record-keeping requirements.

Identification of All Relevant Federal Rules Which May Duplicate, Overlap, or Conflict with the Proposed Rule

Under section 603(b)(5) of the RFA, agencies must identify, to the extent practicable, relevant Federal rules which duplicate, overlap, or conflict with the proposed action. Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, and other FMPs. These include, but are not limited to, the Magnuson-Stevens Act, ATCA, High Seas Fishing Compliance Act, MMPA, ESA, NEPA, Paperwork Reduction Act, and CZMA. This proposed action has been determined not to duplicate, overlap, or conflict with any of these statutes or Federal rules.

Description of Any Significant Alternatives to the Proposed Rule That Accomplish the Stated Objectives of the Applicable Statutes and That Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities

One of the requirements of an IRFA is to describe any alternatives to the proposed rule which accomplish the stated objectives and which minimize any significant

economic impacts. These impacts are discussed below. Additionally, the RFA (5 U.S.C. 603 (c)(1)-(4)) lists four general categories that would assist an agency in the development of significant alternatives. These categories of alternatives are: 1) establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; 2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; 3) use of performance rather than design standards; and 4) exemptions from coverage of the rule, or any part thereof, for small entities.

In order to meet the objectives of this proposed rule, consistent with the Magnuson-Stevens Act and ATCA, NMFS cannot establish differing compliance requirements for small entities or exempt small entities from compliance requirements. Thus, there are no alternatives discussed that fall under the first and fourth categories described above. As the IBQ Program was designed to adhere to performance standards, modifications to the regulations implementing the IBQ Program simply make adjustments to the administration of those underlying performance standards. NMFS analyzed several different alternatives to this action. Following are the rationales that NMFS used to determine the preferred alternative for achieving the desired objectives.

The first alternative is the “no action” (status quo) alternative. The second alternative, the preferred alternative, would provide NMFS the flexibility to allocate quota inseason to qualified IBQ share recipients (those who have associated their share with a vessel) or to permitted Atlantic Tunas Longline vessels with recent fishing activity, whether or not they are associated with IBQ shares. The third alternative would provide NMFS the flexibility to allocate quota inseason to qualified IBQ share recipients

with recent fishing activity or IBQ leasing activity. The economic impacts of these three alternatives are detailed below.

Under all three alternatives, NMFS would continue to consider the regulatory determination criteria for inseason or annual adjustments under 50 CFR 635.27(a)(8), and if NMFS decided that inseason allocation to the Longline category was warranted to increase the amount of quota available to pelagic longline vessels, NMFS would allocate additional quota. The difference among the alternatives is in the specific Atlantic Tunas Longline permit holders that would receive distribution of inseason BFT quota.

Under the “no action” alternative, NMFS would distribute the transferred quota in equal amounts to all 136 qualified IBQ share recipients, which include vessels actively fishing and vessels not actively fishing. This is the manner in which NMFS conducted two past inseason transfers from the Reserve to the Longline category in July 2015 and January 2016 (80 FR 45098, July 29, 2015; 81 FR 19, January 4, 2016). For each of these 34 mt quota transfers, 0.25 mt (551 lb) of IBQ were distributed equally to each of the 136 qualified IBQ share recipients under Amendment 7. IBQ allocation was distributed via the electronic IBQ system to the vessel accounts with permits with IBQ shares associated with a vessel. For those permits with IBQ shares that were not associated with a vessel at the time of the quota transfer, the IBQ is not usable by the permit holder (*i.e.*, may not be leased or used to account for BFT) until the permit is associated with a vessel. Based on the average 2015 IBQ lease price of \$3.34 per pound, the economic value of such an inseason transfer of 551 lb per vessel would be approximately \$1,840 per vessel owner under the “no action” alternative.

Under the preferred alternative, NMFS would have the flexibility to allocate quota inseason either to each of the 136 qualified IBQ share recipients or to all permitted Atlantic Tunas Longline vessels with recent fishing activity. In 2015, there were 104 active pelagic longline vessels (based on logbook data). If NMFS assumes, for example, a future inseason transfer of 34 mt distributed equally among vessels with recent fishing activity, each of those 104 active vessels would receive 0.327 mt (721 lb) under the preferred alternative. Based on the average 2015 IBQ lease price of \$3.34 per pound, the economic value of such an inseason transfer of 721 lb per vessel would be approximately \$2,408 per vessel owner under the preferred alternative. Active vessel owners would receive \$568 more in value (31 percent more quota) than under the “no action” (status quo) alternative.

This increased allocation would help these active vessels to remain fishing longer under fewer quota constraints and reduce the transaction costs associated with finding the same amount of additional quota. The qualified IBQ share recipients with no fishing activity (36 in 2015) would not receive the 551 lb of IBQ worth approximately \$1,840 per vessel that they could have received under the status quo alternative *if* they were to lease their quota to other permit holders. Thus, the cost of this alternative would mainly be limited to the forgone ability to lease out allocation that they otherwise would have received. Under Amendment 7, the purpose of leasing is to accommodate various levels of unintended catch of bluefin and to facilitate directed fishing for Atlantic swordfish, other tunas, and other pelagic species. The few Atlantic Tunas Longline vessels that fished that were not associated with IBQ shares but that leased allocation from qualified IBQ share recipients (4 in 2015) would receive quota under the preferred alternative

worth approximately \$2,408 per vessel. Such an inseason transfer would help facilitate participation by new entrants to the fishery by lowering their costs to obtain quota.

Under the third alternative, NMFS would have the flexibility to distribute quota inseason to qualified IBQ share recipients with recent fishing activity or qualified IBQ share recipients that leased out quota to other Atlantic Tunas Longline permit holders. This differs from the preferred alternative in two key ways. First, under the third alternative, only Atlantic Tunas Longline permit holders with recent activity would receive an inseason transfer, while under the preferred alternative all permitted Atlantic Tunas Longline vessels with recent activity would receive an inseason transfer. Secondly, under the third alternative, relevant activity would include IBQ leasing activity in addition to the recent fishing activity required under the preferred alternative. In 2015, of the 104 pelagic longline vessels with recent fishing activity, 100 vessels were associated with IBQ shares that had recent fishing activity (four vessels were not associated with IBQ shares in 2015) and 5 vessels were associated with IBQ shares that did not fish but did lease their allocation to other vessels. If NMFS assumes a future inseason transfer of 34 mt, each of those 105 vessels associated with IBQ shares (100 with recent fishing activity and 5 that leased IBQ allocation) would receive 0.324 mt (714 lb) under the third alternative. Based on the average 2015 IBQ lease price of \$3.34 per pound, the economic value of such an inseason transfers of 714 lb per vessel would be approximately \$2,385 per vessel owner. Vessels associated with IBQ shares with recent fishing activity or IBQ leasing activity would receive \$545 more in value (30 percent more quota) than under the “no action” (status quo) alternative. This is \$23 less per vessel than under the preferred alternative. In addition, under the third alternative, fewer

vessels with recent fishing activity would receive quota and new entrants would not receive quota. For these reasons, NMFS does not prefer the third alternative.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties,
Reporting and recordkeeping requirements, Treaties.

Dated: September 15, 2016

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.15, revise paragraph (b) introductory text, and add paragraph (b)(9) to read as follows:

§ 635.15 Individual bluefin tuna quotas.

* * * * *

(b) *IBQ allocation and usage.* An initial IBQ quota allocation is the amount of bluefin tuna (whole weight) in metric tons (mt) that a qualified IBQ share recipient (*i.e.*, a share recipient who has associated their permit with a vessel) is allotted to account for incidental catch of bluefin tuna during a specified calendar year. Unless otherwise

required under paragraph (b)(5) of this section, an Atlantic Tunas Longline permitted vessel's initial IBQ allocation for a particular year is derived by multiplying its IBQ share (percentage) by the initial Longline category quota for that year. NMFS may transfer additional quota to the Longline category inseason as authorized under § 635.27(a), and in accordance with § 635.27(a)(8) and (9), and may distribute the transferred quota within the Longline category in accordance with paragraph (b)(9) of this section.

* * * * *

(9) Distribution of additional Longline category quota transferred inseason.

NMFS may distribute the quota that is transferred inseason to the Longline category either to all IBQ share recipients as described under paragraph (k)(1) of this section or to permitted Atlantic Tunas Longline vessels that are determined by NMFS to have recent fishing activity based on participation in the pelagic longline fishery. In making this determination, NMFS will consider factors for the subject and previous year such as the number of BFT landings and dead discards, the number of IBQ lease transactions, the average amount of IBQ leased, the average amount of quota debt, the annual amount of IBQ allocation, any previous inseason allocations of IBQ, the amount of BFT quota in the Reserve category (at § 635.27(a)(7)(i)), the percentage of BFT quota harvested by the other quota categories, the remaining number of days in the year, the number of active vessels fishing not associated with IBQ share, and the number of vessels that have incurred quota debt or that have low levels of IBQ allocation. NMFS will determine if a vessel has recent fishing activity based upon the best available information for the subject and previous year, such as logbook, vessel monitoring system, or electronic monitoring data. Any distribution of quota transferred inseason will be equal among selected

recipients; when inseason distribution is only to Atlantic Tunas Longline permit holders with IBQ shares, it will therefore not be based on the initial IBQ share determination as specified in paragraph (k)(2) of this section.

(i) Regional designations described in paragraph (b)(2) of this section will be applied to inseason quota distributed to IBQ share recipients.

(ii) For permitted Atlantic Tunas Longline vessels with recent fishing activity that are not qualified IBQ share recipients, regional designations of Atlantic (ATL) or Gulf of Mexico (GOM) will be applied to the distributed quota based on best available information regarding geographic location of sets as reported to NMFS during the period of fishing activity analyzed above in this paragraph, with the designation based on where the majority of that activity occurred.

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